SAMSON RESOURCES CO.

IBLA 82-1285 Decided March 17, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM-A40792 (Okla.).

Affirmed.

1. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

   Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

   Under 30 U.S.C. § 188(c) (1976), the Department of the Interior is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within

20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

APPEARANCES: Thomas P. Schroedter, Esq., and Wm. Gregory James, Esq., Tulsa, Oklahoma, for appellant; Gayle Manges, Field Solicitor, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Samson Resources Company has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 27, 1982, denying its petition for reinstatement of oil and gas lease NM-A40792 (Okla.) which terminated by operation of law as of August 1, 1981, for failure to pay the annual rental.

Lease NM-A40792 (Okla.), issued effective August 1, 1980, covers 322.67 acres of acquired lands in the W 1/2 sec. 2, T. 3 N., R. 12 E., Indian meridian, Pittsburg County, Oklahoma. At the same time as that lease issued, BLM issued a second lease, NM-A40791 (Okla.), to appellant for 322.97 acres in the E 1/2 sec. 2, T. 3 N., R. 12 E., Indian meridian. Appellant reports that a 640-acre drilling and spacing unit was established for all of sec. 2 by order of the Oklahoma Corporation Commission, dated October 15, 1980, and that on June 2, 1981, it completed a producing gas well, the Army Unit No. 1, on lease NM-A40791 (Okla.).

On July 13, 1981, after completion of the well, appellant tendered to the district office of the Geological Survey (Survey) 1/ in Tulsa, Oklahoma, minimum royalty payments of $323 each for the leases as provided for in 43 CFR 3103.3-5. Survey received the checks on July 17, 1981. 2/ By letter dated August 5, 1981, Survey returned appellant's checks "for cancellation since minimum royalty payments are not due until July 1982." Appellant reports that on August 6, 1981, it voided the checks and noted on its lease records that minimum royalty payments were due in July 1982 for both leases.

Subsequently, appellant submitted a communitization agreement for the leases to survey's Regional Office in Albuquerque, New Mexico. 3/ Survey refused to approve the agreement because BLM records indicated that lease

1/ The Minerals Management Service assumed the minerals-related functions of the Conservation Division of the Geological Survey under the provisions of Secretarial Order No. 3071, dated Jan. 19, 1982. See 47 FR 4751 (Feb. 2, 1982). See also Secretarial Order No. 3087, as amended (48 FR 8983 (Mar. 2, 1983)).

2/ Appellant reports that the checks were identified with information concerning the type of payment (minimum royalty), legal descriptions of the lands covered, lease serial numbers, and the August 1 anniversary date (Appellant's Statement of Reasons at 1; Exh. A).

3/ Although appellant does not provide a date, counsel for BLM reports that Survey received the proposed communitization agreement on Oct. 26, 1981.

NM-A40792 (Okla.) had terminated for failure to pay rentals on or before the anniversary date of the lease, August 1, 1981. In May 1982, appellant inquired of BLM about the status of the lease and BLM confirmed its termination as of August 1, 1981. On July 21, 1982, appellant tendered rental for 1981 and 1982 and requested reinstatement of the lease.

In its statement of reasons, appellant does not dispute that it did not pay the rental to BLM on or before August 1, 1981. Rather, it cites to section 2(f) of the terms of its lease 4/ and urges that its decision to make payment to Survey

> [a]nticipated finalization and approval of the communitization agreement which would have allowed for unit development and which would have placed both leases on royalty status by virtue of the East Tract discovery. Although minimum royalty payments would not have actually been due for either lease, if communitized, until expiration of the lease year following discovery, and although payment was not due for the East Tract until that time, an amount equal to the advance rental that was due on the West Tract Lease was tendered well in advance of the August 1, 1981 anniversary date.

Appellant argues that in view of its commitment to unit development, the Oklahoma spacing laws, and its producing well, its error resulted from a reasonable and justifiable misunderstanding, not neglect, and its payments were made sufficiently in advance to indicate due diligence. Appellant also argues that its error was not the ultimate cause of its failure to pay, rather, but for Survey's excessive delay in returning the payments and misleading use of the word "payments" in the August 5, 1981, letter, it could have rectified the error. Appellant urges that the Department has ordered reinstatement when the negligence of Government employees was an equally causative factor in the lessee's failure to timely pay rental, citing to Richard L. Rosenthal, 45 IBLA 146 (1980), and should do so in its case.

4/ Section 2(f) provides that the lessee agrees:

"Unless otherwise directed by the Secretary of the Interior, to make rental payments to lessor to the order of the Bureau of Land Management at the proper office as set forth in 43 CFR 3103.1-2(a), except that rental and royalties on producing leases are to be paid to the Regional Oil and Gas Supervisor of the Geological Survey in accordance with 43 CFR 3103.1-2(b), by remittance made payable to the United States Geological Survey. If there is no well on the lease lands capable of producing oil and gas in paying quantities, the failure to pay rental on or before the anniversary date shall automatically terminate the lease by operation of law. * * * For the purposes of this automatic termination provision a discovery of oil or gas in paying quantities on unitized land is construed as a discovery on all lands subject to the unit plan."

It is well established that it is Federal communitization or unitization, not State spacing laws or unitization orders, that controls the status of Federal leases. Kirkpatrick Oil & Gas Co. v. United States, 675 F.2d 1122 (10th Cir. 1982). See Kennedy & Mitchell, Inc., 68 IBLA 80 (1982), and cases discussed therein.

In response, counsel for BLM argues that appellant's $323 check tendered to Survey as minimum royalty for lease NM-A40792 (Okla.) cannot constitute tender to BLM of the required annual rental of $646 for the lease. Counsel asserts that the return on August 5, 1981, allowed ample time for appellant to submit the rental and petition for reinstatement within the 20-day period after the anniversary date allowed by 30 U.S.C. § 188(c) (1976) and, in absence of payment within 20 days, the Department has no authority to reinstate the lease. In addition, counsel contends that, where no communitization agreement has been approved, the production of gas from another lease, even if within a state spacing unit, prior to the anniversary date does not prevent lease NM-A40792 (Okla.) from terminating by operation of law for failure to pay rentals.

Appellant answers by asserting again that the Government did timely receive sufficient payment from it to cover the rental payment although it was not tendered to BLM. It claims that it did not pay the rental within 20 days because it relied on Survey's advice that the "payments" were not due until 1982, and urges that its case is similar to that in Davis Oil Co., 33 IBLA 53 (1977) where the Board held that the lease had not terminated because misleading advice from Survey caused confusion as to whether the appellant's lease was on rental or royalty status.

[1] An oil and gas lessee is obligated to pay advance rental for an oil and gas lease for every year prior to a discovery of oil or gas on the leased land. Upon discovery of oil or gas in paying quantities, the lessee must pay royalty on actual production from the land or a minimum royalty of $1 per acre at the expiration of the lease year beginning after the discovery. 30 U.S.C. § 226 (1976 and Supp. V 1981); 43 CFR 3103.3-2, 3103.3-4, 3103.3-5.

Congress has provided that failure to pay annual rental on or before the anniversary date shall cause an oil and gas lease on which there is no well capable of producing oil and gas in paying quantities to "automatically terminate by operation of law." 30 U.S.C. § 188(b) (1976). This provision is only applicable when a lease is in a rental status, not a royalty status, and in situations where an oil and gas lessee could not have known that rental was due, the Board has held that the lease does not terminate for failure to pay the rental timely. E.g., Davis Oil Co., supra; Odessa Natural Corp., 30 IBLA 28 (1977); Husky Oil Co., 5 IBLA 7, 79 I.D. 17 (1972).

In the Davis case, to which appellant has directed our attention, the Board found that, because of various misleading communications from both Survey and BLM, appellants had sufficient basis for believing that their lease was in royalty status, and therefore had no reason to know that rental was due.

The contrary situation has been presented in The Polumbus Corp., 22 IBLA 270 (1975), where the appellant had not been notified of any change in its lease's status and could not reasonably have believed that its well was capable of production in paying quantities on the lease anniversary date so as to put the lease in royalty status. The Board held that the lease terminated for nonpayment of rent.

In the present case the question is whether appellant had reason to know that the rental was due. Unlike the Davis case and Polumbus case, the

lease at issue is not the one that contains the well and no issue has been raised whether or not the well on lease NM-A40791 produces in paying quantities. For the purpose of our discussion, we will assume that it does, and thereby has royalty status.

Appellant has readily admitted that it submitted the minimum royalty payments in anticipation of "finalization and approval of the communitization agreement * * * which would have placed both leases on royalty status by virtue of the East Tract discovery," and that a communitization agreement was not submitted until after the anniversary date of the lease.

Under 30 U.S.C. § 226(j) (1976), the Secretary of the Interior is authorized to approve communitization agreements when separately leased tracts cannot be independently developed and operated in conformity with an established well-spacing or well-development program and when it is in the public interest. Production under such an agreement is considered production as to each committed lease. 43 CFR 3105.2-2. However, the agreement is effective only after approval by the Secretary. 43 CFR 3105.2-3. Accordingly, the Board has held that where a lessee fails to file a communitization agreement associating leased lands with a producing well on other lands for approval with Survey prior to the anniversary date of the lease, and where Survey does not formally approve such an agreement prior to this time, the lease is not properly regarded as having been in "producing" status on the anniversary date. Melvin A. Brown, 49 IBLA 234 (1980); C. J. Iverson, 21 IBLA 312, 323, 82 I.D. 386, 391 (1975); Harry D. Owen, 13 IBLA 33, 36 (1973); Kirkpatrick Oil & Gas Co., 8 IBLA 108, 110 (1972); see Kirkpatrick Oil Co., 32 IBLA 329 (1977), aff'd, Kirkpatrick Oil & Gas Co. v. United States, supra. Under the statute, regulations and decisions of this Board, we must conclude that since there was no producing well on lease NM-A40792 (Okla.), no communitization agreement had been approved, and there was no other expression by the Department that the status of the lease had changed, appellant was unjustified in its initial decision to submit minimum royalty on lease NM-A40792 (Okla.) and should have known that rental was due on the anniversary date. 5/ Therefore, appellant cannot be excused from paying annual rental, and its lease terminated automatically by operation of law. Melvin A. Brown, supra; 30 U.S.C. § 188(b) (1976).

We find that Survey's alleged excessive delay in returning the unnecessary minimum royalty payments in no way bears upon the fact that appellant should have known that the rental was due. The facts of this case are different from that in Richard L. Rosenthal, supra. In Rosenthal, the lessee submitted a proper rental payment with a copy of the courtesy notice of rental due that he had received to the wrong BLM office. The Board said that "[i]nasmuch as the rental check was accompanied by the courtesy notice

5/ The lease file contains a copy of the BLM courtesy notice of rental due in the amount of $646 on Aug. 1, 1981, sent to appellant at its address of record. Appellant asserts that it never received the notice (Appellant's Statement of Reasons at 2). The obligation to pay rental, however, does not depend on the receipt of the courtesy notice, nor can failure to receive it justify failure to pay the lease rental timely. Richard C. Hubbard, 68 IBLA 170 (1982).

for the lease, employees of the Colorado State Office had actual notice not only of the proper office for receipt of the check, but also that payment was due on or prior to August 1. * * * a delay of over 2 weeks in transmitting the payment was unjustified." Id. at 146. In this case, we have a seemingly proper, albeit unnecessary, tender of minimum royalty payments to the office designated to receive such payments. There is no evidence to show that Survey in any way delayed in its normal processing of minimum royalty payments.

Furthermore, appellant's argument that it was misled as to the status of lease NM-A40792 (Okla.) by Survey's August 5, 1981, letter does not excuse the failure to pay rental timely because appellant did not receive the letter until after the lease had terminated. At best appellant can argue that it relied on Survey's statement so that it did not discover its error and did not pay the rental within the 20-day period after the anniversary date. However, we believe it equally arguable that appellant's reliance was unjustified in view of its error in making the payments and the brevity of Survey's letter, and that appellant should have been prompted to investigate the status of its leases.

[2] Unlike the Davis case, the actions of Survey here in no way contributed to the termination of the lease by operation of law for failure to pay the rental timely. Thus the question is really whether the lease may be reinstated under 30 U.S.C. § 188(c) (1976). Absent payment of the full rental in the proper office within 20 days of termination, the Secretary has no authority to reinstate the lease under 30 U.S.C. § 188(c). Peter R. Buehler, 67 IBLA 242 (1982). This is the case regardless of alleged circumstances that might otherwise constitute grounds for reinstatement and despite allegations of negligence on the part of an agency of the Department. David Fasken, 48 IBLA 258 (1980); Reichhold Energy Corp., 40 IBLA 134 (1979), summary judgment granted Government, Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980).

We note as well that despite appellant's arguments to the contrary, its two minimum royalty checks in the amount of $323 each in no way constitute payment for the rental on lease NM-A40792 (Okla.). As appellant itself has pointed out, the checks were clearly identified as minimum royalty payments for its two separate leases. Thus at most, appellant only tendered half of the required amount for the lease at issue. It is the lessee's responsibility to identify its payments properly, Pyro Energy Corp., 69 IBLA 327 (1982), and submit them to the proper office. Gretchen Capital, Ltd., 37 IBLA 392 (1978); 43 CFR 3103.1-2(a). Furthermore, appellant cannot expect agencies of the Department to guess at its intentions or make adjustments in its accounts to remedy appellant's deficiencies absent a written request to do so. Appellant must bear the burden of its mistaken actions. Consolidated Crude Oil Co., 51 IBLA 217 (1980); Wilfred Plomis, 51 IBLA 125 (1980), and cases cited.

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease NM-A40792 (Okla.) filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447,

signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. 6/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

6/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement is upheld by the Board on behalf of the Secretary after enactment, if it wishes to avail itself of this provision appellant should inquire promptly at the New Mexico State Office of BLM.